

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
ASSOCIATED SAND & GRAVEL, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 1073

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$100.00 civil penalty assessed against appellant for allegedly causing or allowing excessive emissions of an air contaminant came on for formal hearing before the Pollution Control Hearings Board (Art Brown, W. A. Gissberg, and Chris Smith) in Seattle, Washington on December 6, 1976.

Appellant appeared through Gerald R. Crane, Asphalt Division Engineer; respondent appeared by and through its attorney, Keith D. McGoffin. Hearing examiner David Akana presided. Olympia court reporter Sherri Darkow recorded the proceedings.

1 Having heard the testimony, having examined the exhibits, and  
2 being fully advised, the Pollution Control Hearings Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
6 a certified copy of its Regulation I containing respondent's regulations  
7 and amendments thereto.

8 II

9 On August 9, 1976 at about 1:30 p.m., while checking on several  
10 plants in the vicinity, respondent's inspector saw white emissions  
11 coming from the top of appellant's asphalt silo in Auburn. The  
12 inspector recorded observations ranging from 40 to 70 percent opacity  
13 for a period of six consecutive minutes. He thereafter took three  
14 photographs of the emissions. For this occurrence, respondent issued a  
15 Notice of Violation from which a Notice of Civil Penalty in the amount  
16 of \$100.00 followed. This penalty is the subject matter of the instant  
17 appeal.

18 III

19 The preponderance of the evidence shows that the emissions contained  
20 practically no water but rather are for the most part made up of  
21 condensed hydrocarbons. Although the vapor appears to dissipate, it is  
22 merely diluted in the air and remains suspended.

23 IV

24 Hydrocarbons are not thought to be more toxic than particulates such  
25 as dust.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

V

The emissions of the nature involved here can be prevented with existing technology.

VI

Section 9.03(b) of respondent's Regulation I provides that:

[I]t shall be unlawful for any person to cause or allow the emission of any air contaminant for a period or periods aggregating more than three (3) minutes in any one hour, which is:

(1) Darker in shade than that designated as No. 1 (20% density) on the Ringelmann Chart . . . or

(2) Of such opacity to obscure an observer's view to a degree equal to or greater than does smoke described in Subsection 9.03(b) (1) . . . .

Section 3.29 provides for a civil penalty of up to \$250.00 per day for each violation of Regulation I.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and subject matter of this proceeding.

II

Appellant violated Section 9.03(b) of respondent's Regulation I on August 9, 1976 for which a civil penalty in the amount of \$100 was properly assessed.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 III

2 Any Conclusion of Law which should be deemed a Finding of Fact is  
3 hereby adopted as such.


4 From these Conclusions, the Board enters this

5 ORDER

6 The \$100 civil penalty is affirmed.

7 DONE at Lacey, Washington, this 7<sup>th</sup> day of April, 1977.

8 POLLUTION CONTROL HEARINGS BOARD

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10 W. A. GISSBERG, Chairman

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12 CHRIS SMITH, Member

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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER